IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1743 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARVINDKUMAR MANGALDAS GOR

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

NOTICE SERVED for Petitioner

RULE SERVED for Respondent No. 1

MR MD PANDYA for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 12/01/2001

ORAL JUDGEMENT

1. By means of filing this petition under Article 226 of the Constitution of India, the petitioner has prayed to issue an appropriate writ or order directing

the respondent - authorities to consider his case as per Circular No.371 dated 16th October, 1982 issued by the respondent - Gujarat Electricity Board, and grant all the benefits mentioned in the said circular to the petitioner on the basis that he had worked as workcharged Junior Clerk from May 4, 1964 to September 30, 1964.

2. The petitioner has averred in the petition that he was first appointed with the respondent Board as workcharged Junior Clerk vide order dated May 4, 1964 and posted at Vijapur (O & M) Sub-Division for two months. According to the petitioner, the said appointment was made by the respondents, as the petitioner was selected for the said post. The petitioner has claimed that after expiry of two months viz. in the month of July, his services were extended upto September, 1964 and was appointed as workcharged Junior Clerk with effect from May 4, 1964 to September 30, 1964. The petitioner has mentioned in the petition that he had signed the muster roll maintained by the respondent-Board and had received salary from the respondent-Board upto September, 1954. In support of his claim that he was appointed by the respondents as workcharged Junior Clerk, the petitioner has produced a copy of order passed by the respondent authority at Annexure-A to the petition. According to the petitioner, after expiry of two months, the respondent authority had extended his service as workcharged Junior Clerk and the extension order was also issued by the respondent authority, wherein the fact that the petitioner's appointment as workcharged Junior Clerk was extended upto September 30, 1964 was mentioned. According to the petitioner, the said extension order was issued by the respondent authority but not served on the petitioner and, therefore is not available with him. The claim advanced by the petitioner is that he was, thereafter, appointed on permanent basis as Junior Clerk vide order dated October 16, 1964 issued by the competent authority of the respondent Board and the petitioner was posted as Junior Clerk in the office of Executive Engineer, Gujarat Electricity Board, Talod where he had joined his duty with effect from October 21, 1964. The petitioner has averred that in view of the settlement dated June 17, 1982 between the respondent Board and the Union, the respondent authority had issued a Circular being Circular No.371 dated October 16, 1982 and as per the said circular, past services of the employees of the respondent Board who were employed on workcharged basis are taken into account for the purpose of giving the benefit of continuous service in the regular establishments except the benefit of seniority. The petitioner has stated that in the said circular it is

provided that the services of the employees who had initially joined the service on or after May 1, 1960 on workcharge establishment and who are subsequently appointed on regular establishment should be treated as having served continuously on the basis of principles laid down by the Industrial Tribunal in Reference (IT) Nos.86 of 1973, 113 of 1973, 170 of 1974 and 101 of 1976. According to the petitioner, he is entitled to the benefit of continuous service as he had worked as workcharged Junior Clerk from May 4, 1964 to September 30, 1964 and, thereafter, was appointed on regular basis with effect from October 21, 1964. The grievance made by the petitioner in the petition is that he had written registered letter dated December 20, 1982 requesting the respondents to accord benefit of Circular dated October 16, 1982 but the benefit of continuous service is not granted to him. A copy of the letter dated December 20, 1982 addressed to the Deputy Engineer (O & M), Gujarat Electricity Board, Vijapur is produced by the petitioner at Annexure-C to the petition. The petitioner has stated that the Deputy Engineer, Vijapur, Sub-Division had informed him vide letter dated January 17, 1983 that no old record is available in his office and the petitioner should collect the necessary orders from the Division Office. According to the petitioner, the Executive Engineer (O & M), Vijapur had directed the petitioner by letter dated February 8, 1983 to furnish all such required documents and produce the same within a week failing which the claim of the petitioner for continuous service was to be filed. The petitioner has claimed that he is entitled to benefit of continuous service, in view of the circular dated June 17, 1982. Under the circumstances, the petitioner has filed present petition and claim reliefs to which reference is made earlier.

3. Mr.P. R. Chaudhary, Superintending Engineer (O & M), Gujarat Electricity Board, Mehsana Circle, Dist : Mehsana has filed reply affidavit controverting the averments made in the petition. In the reply, it is stated that petitioner has not produced any certificate purportedly issued by competent authority of the Board indicating that he had worked as workcharged Junior Clerk and, therefore, the petitioner is not entitled to the benefit of circular dated June 17, 1982. Mr.Chaudhary has denied the averments made by the petitioner to the effect that after expiry of two months, the petitioner's service were extended upto September, 1964 and maintained that there is no such record showing that his services were extended as claimed in the petition. As per the reply affidavit, the petitioner was called upon to produce certificate issued by the Deputy Engineer or by

the Executive Engineer under whom he might have worked to show that his services were extended upto September, 1964, but the petitioner has not produced any such certificate and, therefore, his claim based on circular dated October 12, 1982 should not be entertained. What is mentioned in the reply is that the name of person working on Nominal Muster Roll are registered in the register and, therein also, the names of persons who are employed on workcharged basis are mentioned, but the said register is required to be maintained for the period of five years only as per the rules of the Board and even the pay bills which are being prepared are required to be maintained for the period of ten years only and as old record is not available the belated claim advanced by the petitioner that his services were extended upto September, 1964 should not be entertained. In para-(9) of the reply, Mr.Chaudhary has specifically stated that the respondent authority had not extended the services of the petitioner as workcharged Junior Clerk and it is not correct to say that the extension order was also issued by the respondent authority and that the appointment of the petitioner as workcharged Junior Clerk was extended upto September 30, 1964. What is claimed in the reply is that the petitioner would have been entitled to the benefit of continuous service provided he had worked as workcharged Junior Clerk with effect from May 5, 1964 to September 39, 1964 and as the petitioner has failed to produce any certificate indicating that he had worked on workcharged basis from May 1964 to September, 1964, the prayer made in the petition should not be granted. Thus, by filing a reply affidavit, Mr.Chaudhary, Superintending Engineer (O & M) has demanded dismissal of the petition.

4. Initially, the petitioner was represented by his lawyer but subsequently his lawyer was elevated on Bench as a Judge of this High Court and, therefore, the office had issued notice calling upon the petitioner to make any alternative arrangement or remain personally present to argue the case. Though notice is duly served to the petitioner, the petitioner has neither made any alternative arrangement nor remained personally present to plead his case. I have heard the learned counsel for the respondent and taken into consideration the documents forming part of the petitioner. It is relevant to notice that the petitioner has not filed rejoinder affidavit to affidavit-in-reply to controvert statements made therein on oath. The claim made by the petitioner that he had served as workcharged Junior Clerk from May, 1964 to September, 1964 is seriously disputed by the respondent Board in its affidavigt-in-reply. The petitioner has not produced any certificate issued by any competent

authority indicating that he had worked as workcharged Junior Clerk from May 4, 1964 to September 30, 1964 and, therefore, this claim of the petitioner cannot be accepted. As mentioned in the reply affidavit, the relevant registers must have been destroyed by this time having regard to the rules relating to destruction of records. It is relevant to notice that according to the petitioner himself, the cause of action had arisen in the Year-1982, but the petitioner has filed the petition belatedly in the Year-1987. Therefore, it is not reasonable to expect the respondent Board to produce relevant record before the Court which may indicate that the petitioner infact had served as workcharged Junior Clerk from May, 1964 to September, 1964. The fact whether the petitioner had worked as workcharged Junior Clerk from May 4, 1964 to September 30, 1964 is seriously disputed by the respondent Board and such a highly disputed question of fact cannot be gone in to by the Court, in the petition which is filed under Article 226 of the Constitution of India. As the petitioner has failed to produce any cogent evidence on record of the case which would indicate that he had infact, worked as workcharged Junior Clerk from May 4, 1964 to September 30, 1964, I am of the view that the petitioner is entitled to the benefit conferred by circular dated October 16, 1982 and the relief claimed by the petitioner in the petition cannot be granted. Thus, the petition has no merits and is liable to be dismissed.

5. For the foregoing reasons, the petition fails and is dismissed. Rule is discharged with no order as to costs.

(J. M. Panchal, J.)

(vrpanchal)